

Letter of Findings: 03-20120419
Withholding Tax
For Tax Periods January, February, March, and April 2012

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ISSUES

I. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of statutory interest.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company, which has two (2) accounts with the Indiana Department of Revenue ("Department") for the purposes of withholding state income tax: the 001 account for its employees and the 002 account for its nonresident partners. For the 001 account, Taxpayer files its returns monthly. For the 002 account, Taxpayer files its returns annually.

Beginning January 2010, Taxpayer employed a payroll service provider to prepare its withholding tax returns. In 2012, after an internal review, the service provider changed Taxpayer's filing frequency of the 001 account from monthly to annually. As a result, Taxpayer did not file the required monthly withholding returns for January, February, March, and April 2012.

In June, the Department assessed Taxpayer based on the best information available ("BIA assessments") within the Department's records. Upon receiving the Department's proposed assessments, Taxpayer's service provider promptly filed the required monthly returns and remitted the tax due; however, Taxpayer requested that the Department abate the statutory interest and negligence penalty. A phone hearing was held. This Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration – Interest.

DISCUSSION

The Department assessed interest on the tax liabilities. Taxpayer protested the imposition of interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

FINDING

Taxpayer's protest regarding the imposition of interest is respectfully denied.

II. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer also requested that the Department waive the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and

circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in part, as follows: The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, the Department did not change Taxpayer's filing frequency. Rather, Taxpayer's service provider changed Taxpayer's filing frequency and did not file the required monthly returns until the Department issued the BIA assessments in June 2012. The service provider explained that it was an error attributed to its internal review concerning Taxpayer accounts. Nonetheless, the service provider claimed that the Department should abate the penalty "based on [Taxpayer's] past payment history." The service provider further maintained that had the Department notified Taxpayer within the 30 days when the January return was due, it would have filed the required monthly returns and remitted the tax sooner.

Upon reviewing Taxpayer's payment history and the documentation submitted by Taxpayer's service provider, the Department must respectfully disagree. First, the Department's records shows that Taxpayer did not maintain a good payment history. Second, it was the service provider who changed Taxpayer's filing frequency, not the Department. The service provider suggested that the Department is responsible to notify Taxpayer when its January return was due, but the service provider could not demonstrate the reasonable cause for its own error. Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to abate the negligence penalty pursuant to the above mentioned statute and regulation.

In short, Taxpayer's protest of the imposition of the negligence penalty is respectfully denied.

FINDING

Taxpayer's protest of the imposition of the negligence penalty is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the imposition of interest is denied. Taxpayer's protest of the imposition of the negligence penalty is also respectfully denied.

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